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**HOUSE BILL 167**

**46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

**INTRODUCED BY**

**Richard D. Vigil**

**AN ACT**

**RELATING TO PUBLIC EMPLOYEE RETIREMENT; REVISING THE STATE  
POLICE MEMBER AND ADULT CORRECTIONAL OFFICER MEMBER COVERAGE  
PLAN 1 TO INCLUDE MOTOR TRANSPORTATION AND SPECIAL  
INVESTIGATIONS MEMBERS; PROVIDING FOR ELECTIONS; RECONCILING  
MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2003;  
AMENDING AND ENACTING CERTAIN SECTIONS OF THE PUBLIC EMPLOYEES  
RETIREMENT ACT.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. Section 10-11-2 NMSA 1978 (being Laws 1987,  
Chapter 253, Section 2, as amended) is amended to read:**

**"10-11-2. DEFINITIONS. --As used in the Public Employees  
Retirement Act:**

**A. "accumulated member contributions" means the  
amounts deducted from the salary of a member and credited to**

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1 the member's individual account, together with interest, if  
2 any, credited to that account;

3 B. "affiliated public employer" means the state and  
4 any public employer affiliated with the association as provided  
5 in the Public Employees Retirement Act, but does not include an  
6 employer pursuant to the Magistrate Retirement Act, the  
7 Judicial Retirement Act or the Educational Retirement Act;

8 C. "association" means the public employees  
9 retirement association established under the Public Employees  
10 Retirement Act;

11 D. "disability retired member" means a retired  
12 member who is receiving a pension pursuant to the disability  
13 retirement provisions of the Public Employees Retirement Act;

14 E. "disability retirement pension" means the  
15 pension paid pursuant to the disability retirement provisions  
16 of the Public Employees Retirement Act;

17 F. "educational retirement system" means that  
18 retirement system provided for in the Educational Retirement  
19 Act;

20 G. "employee" means any employee of an affiliated  
21 public employer;

22 H. "federal social security program" means that  
23 program or those programs created and administered pursuant to  
24 the act of congress approved August 14, 1935, Chapter 531, 49  
25 Stat. 620, as that act may be amended;

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1 I. "final average salary" means the final average  
2 salary calculated in accordance with the provisions of the  
3 applicable coverage plan;

4 J. "form of payment" means the applicable form of  
5 payment of a pension provided for in Section 10-11-117 NMSA  
6 1978;

7 K. "former member" means a person who was  
8 previously employed by an affiliated public employer, who has  
9 terminated that employment and who has received a refund of  
10 member contributions;

11 L. "fund" means the funds included under the Public  
12 Employees Retirement Act;

13 M. "member" means a currently employed,  
14 contributing employee of an affiliated public employer, or a  
15 person who has been but is not currently employed by an  
16 affiliated public employer, who has not retired and who has not  
17 received a refund of member contributions; "member" also  
18 includes the following:

19 (1) "adult correctional officer member" means  
20 a member who is an adult correctional officer or an adult  
21 correctional officer specialist employed by a correctional  
22 facility of the corrections department or its successor agency;

23 (2) "hazardous duty member" means a member who  
24 is a juvenile correctional officer employed by the children,  
25 youth and families department or its successor agency;

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1                                   (3) "motor transportation and special  
2 investigations member" means a member who is employed by the  
3 motor transportation division or the special investigations  
4 division of the department of public safety;

5                                   [~~(3)~~] (4) "municipal detention officer member"  
6 means a member who is employed by an affiliated public employer  
7 other than the state and who has inmate custodial  
8 responsibilities at a facility used for the confinement of  
9 persons charged with or convicted of a violation of a law or  
10 ordinance;

11                                   [~~(4)~~] (5) "municipal fire member" means [~~any~~]  
12 a member who is employed as a full-time nonvolunteer  
13 firefighter by an affiliated public employer and who has taken  
14 the oath prescribed for firefighters;

15                                   [~~(5)~~] (6) "municipal police member" means  
16 [~~any~~] a member who is employed as a police officer by an  
17 affiliated public employer, other than the state, and who has  
18 taken the oath prescribed for police officers; and

19                                   [~~(6)~~] (7) "state police member" means [~~any~~] a  
20 member who is an officer of the New Mexico state police and who  
21 has taken the oath prescribed for such officers;

22                                   N. "membership" means membership in the  
23 association;

24                                   O. "pension" means a series of monthly payments to  
25 a retired member or survivor beneficiary as provided in the

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1 Public Employees Retirement Act;

2 P. "public employer" means the state, ~~any~~ a  
3 municipality, city, county, metropolitan arroyo flood control  
4 authority, economic development district, regional housing  
5 authority, soil and water conservation district, entity created  
6 pursuant to a joint powers agreement, council of government,  
7 conservancy district, water and sanitation district, water  
8 district and metropolitan water board, including the boards,  
9 departments, bureaus and agencies of a public employer, so long  
10 as these entities fall within the meaning of governmental plan  
11 as that term is used in Section 414(d) of the Internal Revenue  
12 Code of 1986, as amended;

13 Q. "refund beneficiary" means a person designated  
14 by the member, in writing, in the form prescribed by the  
15 association, as the person who would be refunded the member's  
16 accumulated member contributions payable if the member dies and  
17 no survivor pension is payable or who would receive the  
18 difference between pension paid and accumulated member  
19 contributions if the retired member dies before receiving in  
20 pension payments the amount of the accumulated member  
21 contributions;

22 R. "retire" means to:

23 (1) terminate employment with all employers  
24 covered by any state system or the educational retirement  
25 system; and

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1 (2) receive a pension from a state system or  
2 the educational retirement system;

3 S. "retired member" means a person who has met all  
4 requirements for retirement and who is receiving a pension from  
5 the fund;

6 T. "retirement board" means the retirement board  
7 provided for in the Public Employees Retirement Act;

8 U. "salary" means the base salary or wages paid a  
9 member, including longevity pay, for personal services rendered  
10 an affiliated public employer. "Salary" shall not include  
11 overtime pay, allowances for housing, clothing, equipment or  
12 travel, payments for unused sick leave, unless the unused sick  
13 leave payment is made through continuation of the member on the  
14 regular payroll for the period represented by that payment, and  
15 any other form of remuneration not specifically designated by  
16 law as included in salary for Public Employees Retirement Act  
17 purposes. Salary in excess of the limitations set forth in  
18 Section 401(a) (17) of the Internal Revenue Code of 1986, as  
19 amended, shall be disregarded. The limitation on compensation  
20 for eligible employees shall not be less than the amount that  
21 was allowed to be taken into account under the state retirement  
22 system acts in effect on July 1, 1993. For purposes of this  
23 subsection, "eligible employee" means an individual who was a  
24 member of a state system before the first plan year beginning  
25 after December 31, 1995;

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1           V. "state system" means the retirement programs  
2 provided for in the Public Employees Retirement Act, the  
3 Magistrate Retirement Act and the Judicial Retirement Act;

4           W. "state retirement system acts" means  
5 collectively the Public Employees Retirement Act, the  
6 Magistrate Retirement Act, the Judicial Retirement Act and the  
7 Volunteer Firefighters Retirement Act; and

8           X. "survivor beneficiary" means a person who  
9 receives a pension or who has been designated to be paid a  
10 pension as a result of the death of a member or retired  
11 member. "

12           Section 2. Section 10-11-27 NMSA 1978 (being Laws 1987,  
13 Chapter 253, Section 27, as amended by Laws 2003, Chapter 268,  
14 Section 9 and by Laws 2003, Chapter 269, Section 1) is amended  
15 to read:

16           "10-11-27. STATE POLICE MEMBER, ADULT CORRECTIONAL  
17 OFFICER MEMBER AND MOTOR TRANSPORTATION AND SPECIAL  
18 INVESTIGATIONS MEMBER COVERAGE PLAN 1--APPLICABILITY.--

19           A. State police member, adult correctional officer  
20 member and motor transportation and special investigations  
21 member coverage plan 1 is applicable to state police members,  
22 adult correctional officer members and motor transportation and  
23 special investigations members who are not specifically covered  
24 by another coverage plan. The credited service of a state  
25 police member who has held the permanent rank of patrolman,

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1 sergeant, lieutenant or captain and does not hold an exempt  
2 rank or who is assigned to the aircraft division as a pilot,  
3 adult correctional officer member or motor transportation and  
4 special investigations member shall have actual credited  
5 service increased by twenty percent for the purposes of state  
6 police member, adult correctional officer member and motor  
7 transportation and special investigations member coverage  
8 plan 1.

9 B. State police member, adult correctional officer  
10 member and motor transportation and special investigations  
11 member coverage plan 1 is applicable to adult correctional  
12 officer members in the first full pay period after July 1, 2004  
13 if the retirement board certifies to the secretary of state  
14 that, of those adult correctional officer members to be covered  
15 under state police member, adult correctional officer member  
16 and motor transportation and special investigations member  
17 coverage plan 1, a majority of the members voting have voted to  
18 approve adoption of that plan at an election conducted pursuant  
19 to Laws 2003, Chapter 268, Section 16.

20 C. State police member, adult correctional officer  
21 member and motor transportation and special investigations  
22 member coverage plan 1 is applicable to motor transportation  
23 and special investigations members in the first full pay period  
24 after July 1, 2005 if the retirement board certifies to the  
25 secretary of state that, of those motor transportation and

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1 special investigations members to be covered under state police  
2 member, adult correctional officer member and motor  
3 transportation and special investigations member coverage plan  
4 1, a majority of the members voting have voted to approve  
5 adoption of that plan at an election conducted pursuant to  
6 Section 10 of this 2004 act."

7 Section 3. Section 10-11-27.1 NMSA 1978 (being Laws 2003,  
8 Chapter 268, Section 10) is amended to read:

9 "10-11-27.1. STATE POLICE MEMBER, [~~AND~~] ADULT  
10 CORRECTIONAL OFFICER MEMBER AND MOTOR TRANSPORTATION AND  
11 SPECIAL INVESTIGATIONS MEMBER COVERAGE PLAN 1--SERVICE CREDIT  
12 REQUIRED. --Notwithstanding the provisions of Section 10-11-27  
13 NMSA 1978, to qualify for payment under state police member,  
14 [~~and~~] adult correctional officer member and motor  
15 transportation and special investigations member coverage  
16 plan 1, an adult correctional officer member shall have  
17 eighteen months of service credit earned under the state police  
18 member, [~~and~~] adult correctional officer member and motor  
19 transportation and special investigations member coverage plan  
20 1 subsequent to July 1, 2004."

21 Section 4. A new section of the Public Employees  
22 Retirement Act, Section 10-11-27.3 NMSA 1978, is enacted to  
23 read:

24 "10-11-27.3. [NEW MATERIAL] STATE POLICE MEMBER, ADULT  
25 CORRECTIONAL OFFICER MEMBER AND MOTOR TRANSPORTATION AND

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1 SPECIAL INVESTIGATIONS MEMBER COVERAGE PLAN 1--SERVICE CREDIT  
2 REQUIRED. --Notwithstanding the provisions of Section 10-11-27  
3 NMSA 1978, to qualify for payment under state police member,  
4 adult correctional officer member and motor transportation and  
5 special investigations member coverage plan 1, a motor  
6 transportation and special investigations member shall have  
7 three years of service credit earned under the state police  
8 member, adult correctional officer member and motor  
9 transportation and special investigations member coverage  
10 plan 1 subsequent to July 1, 2005. "

11 Section 5. Section 10-11-28 NMSA 1978 (being Laws 1987,  
12 Chapter 253, Section 28, as amended) is amended to read:

13 "10-11-28. STATE POLICE MEMBER, [~~AND~~] ADULT CORRECTIONAL  
14 OFFICER MEMBER AND MOTOR TRANSPORTATION AND SPECIAL  
15 INVESTIGATIONS MEMBER COVERAGE PLAN 1--AGE AND SERVICE  
16 REQUIREMENTS FOR NORMAL RETIREMENT. --Under state police member,  
17 [~~and~~] adult correctional officer member and motor  
18 transportation and special investigations member coverage  
19 plan 1, the age and service requirements for normal retirement  
20 are:

21 A. age sixty-five years or older and five or more  
22 years of credited service;

23 B. age sixty-four years and eight or more years of  
24 credited service;

25 C. age sixty-three years and eleven or more years

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1 of credited service;

2 D. age sixty-two years and fourteen or more years  
3 of credited service;

4 E. age sixty-one years and seventeen or more years  
5 of credited service;

6 F. age sixty years and twenty or more years of  
7 credited service; or

8 G. any age and twenty-five or more years of  
9 credited service. "

10 Section 6. Section 10-11-29 NMSA 1978 (being Laws 1987,  
11 Chapter 253, Section 29, as amended) is amended to read:

12 "10-11-29. STATE POLICE MEMBER, [~~AND~~] ADULT CORRECTIONAL  
13 OFFICER MEMBER AND MOTOR TRANSPORTATION AND SPECIAL  
14 INVESTIGATIONS MEMBER COVERAGE PLAN 1--AMOUNT OF PENSION--FORM  
15 OF PAYMENT A.--Under state police member, [~~and~~] adult  
16 correctional officer member and motor transportation and  
17 special investigations member coverage plan 1, the amount of  
18 pension under form of payment A is equal to three percent of  
19 final average salary multiplied by credited service. The  
20 amount shall not exceed eighty percent of the final average  
21 salary. "

22 Section 7. Section 10-11-30 NMSA 1978 (being Laws 1987,  
23 Chapter 253, Section 30, as amended) is amended to read:

24 "10-11-30. STATE POLICE MEMBER, [~~AND~~] ADULT CORRECTIONAL  
25 OFFICER MEMBER AND MOTOR TRANSPORTATION AND SPECIAL

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1 INVESTIGATIONS MEMBER COVERAGE PLAN 1--FINAL AVERAGE SALARY.--  
2 Under state police member, [~~and~~] adult correctional officer  
3 member and motor transportation and special investigations  
4 member coverage plan 1, the final average salary is one thirty-  
5 sixth of the greatest aggregate amount of salary paid a member  
6 for thirty-six consecutive months of credited service. Under  
7 state police member, [~~and~~] adult correctional officer member  
8 and motor transportation and special investigations member  
9 coverage plan 1, if a state police member has less than thirty-  
10 six months of credited service, the final average salary is the  
11 aggregate amount of salary paid a member for the member's  
12 period of credited service divided by the member's credited  
13 service. "

14 Section 8. Section 10-11-31 NMSA 1978 (being Laws 1987,  
15 Chapter 253, Section 31, as amended) is amended to read:

16 "10-11-31. STATE POLICE MEMBER, [~~AND~~] ADULT CORRECTIONAL  
17 OFFICER MEMBER AND MOTOR TRANSPORTATION AND SPECIAL  
18 INVESTIGATIONS MEMBER COVERAGE PLAN 1--MEMBER CONTRIBUTION  
19 RATE.--A member under state police member, [~~and~~] adult  
20 correctional officer member and motor transportation and  
21 special investigations member coverage plan 1 shall contribute  
22 seven and six-tenths percent of salary. "

23 Section 9. Section 10-11-32 NMSA 1978 (being Laws 1987,  
24 Chapter 253, Section 32, as amended) is amended to read:

25 "10-11-32. STATE POLICE MEMBER, [~~AND~~] ADULT CORRECTIONAL

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1 OFFICER MEMBER AND MOTOR TRANSPORTATION AND SPECIAL  
2 INVESTIGATIONS MEMBER COVERAGE PLAN 1--STATE CONTRIBUTION  
3 RATE. --The state shall contribute twenty-five and one-tenth  
4 percent of the salary of each member under state police member,  
5 [~~and~~] adult correctional officer member and motor  
6 transportation and special investigations member coverage  
7 plan 1. "

8 Section 10. TEMPORARY PROVISION--STATE POLICE MEMBER,  
9 ADULT CORRECTIONAL OFFICER MEMBER AND MOTOR TRANSPORTATION AND  
10 SPECIAL INVESTIGATIONS MEMBER COVERAGE PLAN 1--ELECTIONS. --On  
11 or before October 1, 2004, the retirement board shall conduct  
12 an election to submit to motor transportation and special  
13 investigations members currently contributing under state  
14 general coverage plan 3 the question of adopting a state police  
15 member, adult correctional officer member and motor  
16 transportation and special investigations member coverage  
17 plan 1. The election shall be conducted in accordance with  
18 procedures adopted by the retirement board, and the retirement  
19 board shall certify the results of the election to the  
20 secretary of state on or before November 1, 2004.

21 Section 11. EFFECTIVE DATE. --The effective date of the  
22 provisions of this act is July 1, 2004.